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In re Application of:
BARBAS, Carlos, F., et al.
U.S. Application No.: 10/581,431
PCT No.: PCT/US2004/040381
International Filing Date: 03 December 2004
Priority Date: 03 December 2003
Atty Docket No.: TSRI 1019.1 US
For: INEGRIN $\alpha_{1b}\beta_3$ SPECIFIC
ANTIBODIES AND PEPTIDES

DECISION

This decision is issued in response to the "Petition For Waiver Of Examination Fees" filed 07 May 2007 and the "Petition For Correction Of USSN In Deposit Account Statement" filed 04 June 2007. No petition fees are required.

BACKGROUND

On 03 December 2004, applicants filed international application PCT/US2004/040381. The application claimed a priority date of 03 December 2003 and it designated the United States. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 03 June 2006.

On 02 June 2006, applicants filed a Transmittal Letter for entry into the national stage in the United States that included the authorization to charge Deposit Account No. 50-3194 for required fees, including \$1200 itemized as follows: \$300 basic national fee; \$0 examination fee; \$100 search fee; \$600 excess total claims fee; and \$200 excess independent claims fee. Applicants' submission also included an executed declaration document.

On 06 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification To Comply With Requirements For Patent Applications Containing Nucleotide And/Or Amino Acid Sequence Disclosures" (Form PCT/DO/EO/922) indicating that sequence listing materials were required, as well as an additional \$330 in fees (\$130 as the surcharge for late filing of the examination fee, search fee, or declaration, and \$200 as the examination fee).

On 07 May 2007, applicants filed a response to the Form PCT/DO/EO/922 (with the required \$120 one-month extension fee). The response included sequence listing materials, payment of the \$130 surcharge, and the "Petition For Waiver Of Examination Fees" considered herein.

On 04 June 2007, applicants filed the "Petition For Correction Of USSN In Deposit Account Statement" considered herein. This petition asserts that the fees paid on 07 May 2007 have been assigned to the wrong application number.

DISCUSSION

1. Examination Fee:

The USPTO was the International Search Authority (ISA/US) on international application PCT/US2004/040381, and the Written Opinion Of The International Searching Authority mailed by the ISA/US on 18 November 2005 indicated that all the claims in the application satisfy the provisions of PCT Article 33(1)-(4). The appropriate U.S. national stage examination fee is therefore \$0 (see 37 CFR 1.492(c)(1)). Accordingly, applicants' petition for waiver of the \$200 examination fee required by the Form PCT/DO/EO/922 is appropriately granted.

It is noted that applicants are still required to pay the \$130 surcharge set forth in the Form PCT/DO/EO/922, even though no examination fee was due, because applicants have not yet filed an acceptable declaration in compliance with 37 CFR 1.497. The declaration included with the 02 June 2006 submission (which consists of one copy of the first two pages and two different copies of the third page) appears to be a compilation of two separately executed declarations, and as such is not acceptable under 37 CFR 1.497. See MPEP § 201.03(II)(B): "Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration." Thus, applicants failed to provide an acceptable declaration prior to the expiration of the thirty-month deadline, requiring payment of the \$130 surcharge.¹

2. Correction Of Application Number To Which Fee Payment Was Assigned:

A review of the materials filed by applicants on 07 May 2007 confirms that these materials, including the \$130 surcharge fee and the \$120 extension fee, were properly directed to the present application, application number 10/581,431. However, as indicated in the Deposit Account records provided by applicants, and confirmed by a review of USPTO records, these fee payments were mistakenly applied to U.S. application number 10/571,431.

As requested in the present petition, USPTO records will be corrected so that such fees are applied to the present application file.

CONCLUSION

For the reasons discussed above, the "Petition For Waiver Of Examination Fees" and the "Petition For Correction Of USSN In Deposit Account Statement" are **GRANTED**.

¹ It is also noted that there is a disparity between the name of the second inventor as listed on the published international application (Jenho CHUNG) and on the declaration (Junho CHUNG). Resolution of this disparity is required (see MPEP section 1893.01(e)).

The appropriate examination fee for the present application is \$0.

USPTO records will be corrected to indicate that the \$130 surcharge fee and \$120 extension fee submitted on 07 May 2007 are directed to the present application, U.S. application number 10/581,431.

As discussed above, the declaration filed herein on 02 June 2006 is defective in that it appears to be a compilation of multiple declarations and due to the disparity in the name of the second inventor.

This application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) requiring submission of an acceptable oath or declaration in compliance with 37 CFR 1.497 and any additional sequence listing materials that might be required.

A handwritten signature in black ink, appearing to read 'rll n', is positioned above the typed name of the attorney advisor.

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